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EXAMINER	
THAKUR, VIREN A	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/501,975	Applicant(s) LABORBE ET AL.	
	Examiner VIREN THAKUR	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-12, 14, 16 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-12, 14, 16 and 18-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 28, 2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claim 10-12,14,16, 19, 23-24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prasad et al. (WO 0065937) in view of Coppage et al. (US 3965259), Hood (US 4089983) and Igoe (Dictionary of Food Ingredients).

Regarding instant claim 10, Prasad et al. disclose a food composition such as fish and meat, which has a coating comprising a browning agent, which is considered a colorant and a protein such as egg white powder, soy or whey protein (Abstract and Page 3, lines 13-20 and Page 3, line 26 to Page 4, line 2). Claim 10 now recites the limitations from now cancelled claim 13. The claim recites the new limitation of wherein the coating comprises at least one of a course of pigments or colorants selected from the group consisting of a powdered blood, a frozen blood, mineral oxides and combinations thereof. It is noted that Prasad et al. already teach employing colorants or pigments for the purpose of imparting a roasted appearance to the food product (page 6, line 11 to page 7, line 10). The claim differs in the particular colorant employed. It is noted that Coppage et al. has been relied on to teach that mineral oxides, such as iron oxide, has been conventionally employed for the purpose of providing a particular cooked appearance to the food product (column 7, lines 36-52). Hood is relied on to teach food products for animal and human consumption (Column 1, lines 6-9) wherein iron oxide has been employed in combination with other colorants to provide minor adjustments until the desired color is achieved (Column 4, lines 31-35 and lines 40-42). Igoe, has similarly been relied on to teach that iron oxide has been a conventional food colorant. Therefore, once it was known to employ particular colorants for the purpose of browning and providing a roasted appearance, the particular conventional colorants

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employed for achieving the roasted appearance would therefore have been an obvious matter of choice and/or design, routinely determinable by experimentation.

Claim 11 differs from the combination by specifically reciting a particular water content of the coating.

It is noted that Prasad et al. teach on page 13, lines 15-17 that the liquid marinade that coats the food product can comprise water from between 5 to 80 percent by weight of the liquid marinade. To therefore employ an amount of water between 30 to 50 percent, for instance, would have been obvious to the ordinarily skilled artisan for art recognized in applicants' intended function. For instance, to modify the amount of water would have been obvious depending on the desired consistency and fluidity desired for the composition.

Regarding instant claim 12, the combination teaches employing the claimed colorant, such as iron oxide, which imparts a particular type cooked appearance to the food. Prasad et al. disclose that the colorant is present at 15 percent (Page 5, lines 17-20), which falls within the claimed range of 5 to 20 percent. Most preferably Prasad et al. disclose using between 3 to 5 percent, which is also within the range of about 5 to about 20 percent.

Regarding instant claim 14, Prasad et al. disclose using proteins in the coating as part of the texturing agent. Prasad et al. disclose using preferably about 32 to 38 percent of the texture improving agent (Page 5, lines 25-28). The proteins included in this component are egg white, whey protein and soy protein. On page 10, Prasad et al. disclose the maximum preferable ranges for each of these as 18 percent, 12 percent

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and 15 percent, respectively. Therefore the total protein content in the coating is 45 percent. Since Prasad et al. use maximum preferable amount of the texture improving agent of 38 percent, the about of total protein in the coating is 45 percent of 38, which is approximately 18 percent. An additional protein component, an enzyme modified dairy ingredient such as hydrolyzed wheat gluten, is also included in the browning agent (Page 7, line 29) present at most preferably between 60 and 70 percent of the browning agent composition. The browning agent is included in the coating at “most preferable” between 3 and 5 percent (Page 5, line 19). Therefore the maximum preferable amount of hydrolyzed wheat gluten in the browning agent is 5×70 percent, which is 3.5 percent. The total amount of protein included in the coating is thus 18 percent + 3.5 percent = 21.5 percent. This is considered to be about 20 percent.

Regarding instant claim 16, Prasad et al. disclose adding water to the coating (Page 4, lines 3-6).

Regarding instant claim 19, since the food composition is a meat, which has been well known to be eaten by pets, the food composition of the combination is also a pet food.

Regarding instant claim 23, it is noted that the claims are directed to a product and not a method of cooking. Additionally, by reciting “after cooking” the claim does not positively recite cooking but merely indicates that at some point the combination of the food product and coating are cooked and when this happens a particular result is achieved. In any case, Prasad et al. disclose the claimed food composition and coating and further cook the food and coating (see claim 24 below). Applicant and Prasad et al.

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are using conventional cooking techniques. Therefore the coating and composition of Prasad et al. would intrinsically have achieved the same result as that of the claimed invention.

Regarding instant claim 24, it is noted that Prasad et al. teach coating a meat product with a coating composition and then cooking said food composition with coating in a microwave or convection oven (Page 4, lines 12-16 and Page 5, lines 3-7).

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 10-12, 14, 16, 19, 23 and 24, above and in further view of Martin et al. (US 4781939) and Freck et al. (US 3900573).

Regarding claim 18, Prasad et al. teach using a combination of meat comprising pork, fish, poultry, beef and lamb (Page 4, lines 20-28). However, the claim differs from the combination in specifically reciting the particular meat components and wherein the combination meat product further comprises water, a cereal and by-products of the meats.

Martin et al. is relied on to teach meat products such as sausage and frankfurters (Column 1, line 21) which are made using a combination of pork, fish, poultry in combination with the by-products of each for the purpose of making meat emulsion chunks for both human and animal consumption (Column 3, lines 10-15 and lines 18-49). Martin et al. further teach that the addition of the types of meat further depends on the desired flavor of the product (Column 3, line 28). Martin et al. further teach using a combination of meat and meat by-products is an emulsion (Column 2, line 20) and is

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used for pet foods (Column 3, lines 10-15 and line 44). Thus the prior art is similar in that they teach forming emulsions used for pet foods that combine a variety of meat and meat by-products.

Therefore to further include by-products of the meat would have been obvious to one having ordinary skill in the art, since the prior art taught that it has been conventional to combine the by-products for the purpose of achieving a desired taste. It is noted that Prasad et al. teach wherein the food product can be a combination of different meats and fish (see page 4, lines 20-26). Therefore to use a meat and also use fish, in combination with the byproducts would have been an obvious matter of choice routinely determinable for the purpose of achieving the desired taste.

Claim 18 further differs from the combination in reciting wherein the food product consists of a cereal and water.

Similar to Martin et al., Freck et al. teach simulated meat products such as hamburger (Column 3, lines 67 to Column 4, line 4), which also includes a combination of meat such as poultry, pork, fish and beef (Column 2, lines 50-65). But also uses cereal (See Table on Column 2) and water to aid in binding the ingredients together to form the simulated meat products (Column 1, lines 50-63). As a result the combination meat product has a good consistency. Thus, Freck et al. teaches the ordinarily skilled artisan that a food product that combines multiple meat components would require water and a binder such as cereal in order to hold form and produce a "simulated meat." It is noted that Martin also teaches using binders for holding the combination meat product together (Column 3, lines 53-66).

Based on this teaching it would have been obvious to one having ordinary skill in the art to use water and cereal for the purpose of ensuring the meat products are sufficiently bound together.

6. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claims 10-12, 14, 16, 19, 23 and 24, above and in further view of Dupont-Delhovren (US 5567466), as further evidenced by Palmer (US 3808340).

Regarding claim 20, Prasad et al. teach wherein the food product can be a combination of different meats and fish (see page 4, lines 20-28). The claim differs in the particular type of food product to be coated.

Dupont teaches a food product which is a meat emulsion (column 3, lines 4-20), that comprises dyes and flavoring agents (column 2, lines 29-32), which is further cooked using hot air, steam, a combination of hot air and steam or a microwave oven (column 3, lines 21-25). Once it was known to coat meat products with a composition to improve the roasted appearance, as taught by Prasad et al., the particular conventional food product to which the coating was added would have been an obvious matter of choice. Nevertheless, Dupont teaches the conventionality of meat emulsions. To therefore substitute one conventional food product to be coated with a composition that imparts a particular appearance for another conventional food product, such as a meat emulsion, would therefore have been an obvious matter of choice and/or design depending on the type of food product desired to be coated. In this case, if one wanted

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to incorporate a roasted appearance to a food emulsion, it would have been obvious to coat a meat emulsion, such as that taught by Dupont with the coating.

Regarding claim 21 and the particular components of the emulsion, it is noted that, Dupont discloses wherein the emulsion comprises a mixture of meat, cereal, water (column 1, lines 28-32), a colorant such as dyes (column 2, line 32 and lines 56-57), vitamins, salt, which is also a flavoring (column 2, lines 56-57), vegetable protein extract, which is a plant texturing protein (column 2, lines 35-41) and pig or beef plasma, which is an animal texturing protein (column 2, lines 46-48). Palmer is cited as further evidence that animal and vegetable proteins provide texture to food products (Column 2, lines 37-40).

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claims 10-12, 14, 16, 19, 23 and 24, above and in further view of Palmer (US 3808340), Corbett et al. (US 4508741), Francis (The Encyclopedia of Food Science and Technology), University of Chicago, Dictionary of Food Science and Technology, Ziegler (US 3073700), Durst (US 3434843), Igoe (The Dictionary of Food Ingredients), Stoloff (US 2567085) and Palmer (US 3873736).

Regarding claim 22, the combination of Prasad et al. Coppage et al and Igoe teach a coating comprising a mineral oxide colorant, such as iron oxide. Prasad et al. teach wherein the coating comprises a caramel color (page 6, line 23) and further also recognized the browning of sugar as a result of the cooking process (page 8, line 27 to

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page 9, line 2) (i.e. caramelized sugar). Corbett et al. teach that it has been well known in the art to use caramel colorants for coating pet food products (Column 4, lines 61-66). Francis is cited as further evidence that it has been well known that caramel colorants are derived by caramelizing sugar. Even further evidenced by Coppage on column 8, line 37, caramel (i.e. caramelized sugar) has been a conventionally employed colorant. Prasad et al. further teach wherein the coating comprises starch (page 3, line 26 to page 4, line 2), water (page 13, lines 15-17), salt and other flavorings (page 6, lines 4-9) and gluten (page 7, lines 29-30). Regarding the gluten, it is noted that enzyme modified wheat gluten hydrolysate is still gluten. This is further evidenced by the fact that hydrolyzed wheat gluten is still listed as one of the components that should not be included in gluten-free diets. University of Chicago provides further evidence that wheat gluten hydrolysate contains gluten (See page 2 of 7 of section titled "Ingredients to Avoid (Contain Gluten)).

The claim further differs in the other particular conventional ingredients used in the composition, such as flour.

Palmer '340 teaches that it was conventional to employ flour, such as bone flour (Column 7, line 43) and wholemeal wheat flour (Column 7, line 41) into the coating that coats the meat. As evidenced by Dictionary of Food Science and Technology, wholemeal flour is a starch and also comprises gluten. Wholemeal wheat flour contains all the components of the wheat grain. The Dictionary of Food Science and Technology teaches that wheat grain comprises gluten. Palmer '340 further teaches wherein the coating comprises salt (Column 7, line 44). Palmer '340 is further analogous in that

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Palmer '340 also teaches that it has been conventional to employ colorants (Column 3, line 40) and sugar (Column 3, line 17). In addition, on column 8, lines 25-47, Coppage et al. also teach that it was conventional to employ what flour and barley, which both contain gluten, as evidenced by University of Chicago on page 2 of 7. Coppage et al. also teaches employing salt and vitamins and colorants. The art taken as a whole thus teaches that these ingredients have been conventionally employed for their art recognized purpose in compositions that coat meat products. To therefore modify the combination and employ conventional ingredients, such as wholemeal wheat flour, which thus also comprises the gluten, and to use the other conventional ingredients taught by Palmer '340 and Coppage et al. for coating a food product for giving the food product a pleasing flavor, aroma and appearance, would have been obvious for its art recognized and applicants' intended function.

The combination as applied to claims 10-12, 14, 16, 19, 23 and 24 already teach using iron oxide and caramel (i.e. caramelized sugar) as a colorant. The claim further differs from the combination in reciting particular conventional colorants, such as powdered blood.

It is noted that Palmer '340 teaches using blood, which has been known to be used as a colorant, (See Example VII on column 7). Coppage et al. teach using dried blood (column 8, line 28). Ziegler is relied on to teach that it was conventional to use dried blood as a colorant for meat products. To therefore employ dried blood would therefore have been an obvious matter of choice to one having ordinary skill in the art depending on the desired color to be imparted.

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In view of the references to Prasad, Coppage et al., Palmer '340 and Hood, caramelized sugar, iron oxide and powdered blood have been conventionally known colorants applied to meat products and further to meat products such as animal feeds. Palmer '340 teaches combining colorants to achieve a desired color, as taught by using a color mixture (See Example III on column 5, which results in a color and appearance similar to that of roasted meat). Thus, Palmer '340 teaches using coloring to achieve roasted appearance. Coppage et al. similarly teaches employing particular colorants to achieve a desired cooked appearance. Therefore depending on the desired color to be achieved for the coating, it would have been obvious to use mixtures of meat and pet food colorants, such as the caramelized sugar and iron oxide taught by Corbett et al. and Hood, since the art teaches that these colorants have been well known in the industry to color meat products and since Palmer '340 teaches using a mixture of colors to result in a roasted meat product. Regarding the powdered blood, Coppage et al., Ziegler, as well as Palmer '340 teach the conventionality of using blood as a colorant. Using powdered blood, as taught by Ziegler et al. reduces the risk of putrefaction and spoiling of the colorant. Therefore it would have been obvious to use powdered blood as opposed to liquid blood to prevent spoiling of the blood. It is noted that applicant is not the first to use a mixture of colorants and further to use blood, iron oxide and caramelized sugar and the prior art teaches that each of these colorants has been well established to be used in mixtures for achieving a desired color and thus to use this combination would not have provided a patentable feature over the prior art.

Claim 22 further differs from the combined prior art in using a guar, a carboxymethyl cellulose and sodium alginate in the coating composition.

It is noted that Palmer '340 teaches using gums such as gum Arabic and also teach using carboxymethylcellulose in the coating compositions (See Example VIII on column 8 and Example X on column 9). These gums have been well known binders, and Prasad et al. teach that binders can be added into the coating composition (page 12, lines 18-19). To therefore employ conventional binders, such as guar and carboxymethylcellulose would therefore have been obvious for art recognized in applicants' intended function. Furthermore, Durst teaches using a combination of film formers for an external coating on a food product which can use a combination of film forming substances including carboxymethylcellulose, guar gum and sodium alginate (Column 2, lines 36-48). As a result of using a combination of edible film formers in the coating on the food product, rancidification is minimized and the desired qualities of the food product, such as chewiness and flexibility through storage are preserved (Column 2, lines 22-35). Durst further teaches using humectants and water in combination with the film forming substances for the purpose of encapsulating the food product (Column 2, lines 49-50).

Similar to Durst, Palmer '340 teaches using a humectant (Column 3, line 43) and a film former such as gums and carboxymethylcellulose in combination with water in a coating for a food product, which coagulates and thus results in an even film over the food product (Column 4, lines 38-53). Humectants, antioxidants and stabilizers have been well established in the art as components used to protect the quality of the food.

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For instance, humectants drive moisture away from the food product and antioxidants and stabilizers prevent spoiling and loss of organoleptic properties of the food product. Therefore to one having ordinary skill in the art, to use a combination of edible film forming substances would have been obvious based on Durst's teaching of using a combination of edible film forming substances to protect a food product. To use a combination of edible film forming substances, in view of the art taken as a whole would have been obvious to the ordinarily skilled artisan for the purpose of protecting the food from rancidification and preserved the organoleptic properties over long term storage, while also aiding in providing a particular consistency to the coating..

Further regarding instant claim 22 and the use of ascorbic acid, it is noted that Palmer '340 teach adding vitamins and antioxidants to the coating (Column 3, lines 40-42). Palmer is silent in specifically using ascorbic acid.

Igoe teaches that ascorbic acid provides nutrients and is essential for healthy bones and teeth. Igoe further teaches that ascorbic acid has also been well known to be used as an antioxidant to increase the shelf life of processed foods (Page 14). Palmer teaches producing a processed food and further teaches using an antioxidant as well as a vitamin solution within the coating. Therefore to use ascorbic acid would have been obvious to the ordinarily skilled artisan, in light of the teachings of Palmer '340 and the Dictionary of Food Ingredients, as an antioxidant and as a nutritive vitamin. Stoloff is cited as further evidence of the conventionality of coating a food product with ascorbic acid for the purpose of preservation (Column 2, Lines 9-16).

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Claim 22 further differs from the combined prior art in reciting using plasma.

Palmer '736 teaches that gluten, plasma soy protein and egg albumen are well known binders that are also heat coagulable (Column 4, lines 55-59). Furthermore, Example 2 teaches combining gluten and plasma to form the coagulable protein. Therefore the art recognized that both gluten and plasma are proteins which also act as binders, thus serving similar functions. Based on this recognition in the prior art, to combine the two protein binders used for the same purpose would not have provided a patentable feature over the prior art (See MPEP 2144.06 I).

Response to Arguments

8. As a result of the amendment to the claims, the rejection of claim 21 under 35 U.S.C. 112, first paragraph, has been withdrawn. As a result of the amendment to the claims, the rejection of claims 10, 12-14, 16, 19 and 23-24 under 35 U.S.C. 102(b) as being anticipated by Prasad et al. has been withdrawn.

9. Applicant's arguments that the reference to Prasad fails to disclose or suggest any of Applicants' claimed pigments or colorants, including a one "selected from a group consisting of a powdered blood, a frozen blood, mineral oxides and combinations thereof" has been considered but is moot in view of the new grounds of rejection. It is

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noted however, that the newly applied references also teach using powdered blood and mineral oxides, as discussed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

/V. T./
Examiner, Art Unit 1794